IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

WP(C).No. 25158 of 2007(T)

PETITIONER:

POPULAR VEHICLES AND SERVICES LTD.,
KUTTUKARAN CENTRE, MAMANGALAM,
KOCHI-682 025, REPRESENTED BY ITS
MANAGING DIRECTOR.

BY ADV. SRI.K.SURENDRA MOHAN
SRI.K.PAUL KURIAKOSE

RESPONDENTS:
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1. THE SUB INSPECTOR OF POLICE,
KAYAMKULAM.

2. THE CIRCLE INSPECTOR OF POLICE,
KAYAMKULAM.

3. THE DISTRICT SUPERINTENDENT OF POLICE,
ALAPPUZHA.

4. CITU HEADLOAD WORKERS UNION
KAYAMKULAM UNIT NO.04-01/2001
REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.K.RAMAKUMAR FOR R4
GOVERNMENT PLEADER SRI. P.A.SALIM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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WP(C) NO: 25158/2007 T

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE PETITIONER'S COMPLAINT DT. 9.8.07.

EXT.P2. COPY OF THE JUDGMENT DT. 7.4.06 IN WPC NO. 7930/2005.

RESPONDENT'S EXHIBITS

EXT.R4A. COPY OF THE IDENTITY CARD UNDER THE KERALA HEAD LOAD WORKERS ACT.

EXT.R4B. COPY OF THE IDENTITY CARD ISSUED UNDER THE KERALA HEAD LOAD WORKERS ACT.

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K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) No.25158 of 2007-T

Judgment

Balakrishnan Nair, J.

The petitioner is a Public Limited Company. It has opened a service station at Kayamkulam. The spare parts to be used in the service station are brought in lorries and the unloading of the same is done by the regular workmen attached to the service station, it is submitted. The vehicles, carrying spare parts, come only once in a while, say, once in a month or so. Therefore, the unloading work is only an incidental work and not a principal work and so, the regular workmen attached to the unit are doing the same. While so, when a vehicle, carrying spare parts came on 09.08.2007, the members of the 4th respondent caused obstruction. They claimed the right to unload the consignment. The petitioner filed Ext.P1 petition before the Police, seeking protection. Since no help from the side of the Police was forthcoming, this Writ Petition is filed, seeking the following reliefs :

"A. To call for the records and proceedings of the respondents relating to Ext.P1 complaint of the petitioner and after scrutiny thereof to direct respondents 1 to 3 to afford adequate and effective protection to the petitioner, his property, his employees and customers, for the purpose of conducting his Service Station at Kayamkulam, by the issue of a writ of mandamus or any other appropriate writ, order or direction.

B. To direct respondents 1 to 3 to do all that is necessary to ensure that the work of the petitioner's Service Station at Kayamkulam is carried on smoothly, without any interference from any outsiders, including persons claiming to be headload workers, by the issue of a writ of mandamus or any other appropriate writ, order or direction."

In support of the above reliefs, the petitioner points out that the occasional work of unloading the spare parts, can be done by its regular workmen. Since there is no regular loading and unloading work, such workmen need not get the registration under the Act, it is submitted.

2. The 4th respondent has filed a counter affidavit, in which it is submitted that its members are registered headload workers under the Kerala Headload Workers Rules and they are doing the loading and unloading work in the area. When the construction of the petitioner's service station was going on, it was the workmen of the 4th respondent, who did the loading and unloading work of the construction materials. It is a scheme covered area and therefore, the loading and unloading work in the area can be done only by registered headload workers. The petitioner does not have any such workmen. So, the members of the 4th respondent are entitled to do the work, it is submitted.

3. We heard the learned counsel on both sides. The learned counsel for the petitioner relied on the decision of the Division Bench of this Court in **Obrin v. S.I. of Police** (2005(3) KLT 861) and Ext.P2 Judgment of this Court, in support of his submissions. The learned counsel for the 4th respondent, on the other hand, relied on the decision of this Court in **Venkataraman v. S.I. of Police** (2005(4) KLT 365). Both sides relied on the Full Bench decision of this

Court in **Raghavan v. Superintendent of Police** (1998(2) KLT 732). The legal position, which emerges from the above decisions is that all headload workers regularly employed by the employer will have to get registration under the Headload Workers Rules. But, if the headload work is only of a casual nature, the workmen doing the said work, need not get registration.

4. But, in this jurisdiction, we are concerned only with the failure of the Police to perform their duty. The police cannot be conceded the power to adjudicate a dispute concerning the rights flowing from the provisions of the Headload Workers Act, Rules and the scheme framed thereunder. If the petitioner is denying work to the workmen of the 4th respondent, the said respondent has to move the forums provided under the Headload Workers Act, establish its right and armed with that order, claim the work. Till such time, the petitioner must be conceded liberty to engage its own workmen for doing the unloading work, without prejudice to the contentions of the 4th respondent. If any obstruction is caused to the unloading work in the petitioner's unit by outsiders, the petitioner can move the first respondent. In that event, the first

respondent shall look into the complaint and remove the obstruction in accordance with law. This direction to grant protection to the petitioner will be subject to any orders that may be passed in favour of the 4th respondent by the authorities under the Headload Workers Act. In other words, this Judgment will not stand in the way of the statutory authorities, considering the claim of the 4th respondent and also implementing the orders, if any, passed in favour of the said respondent.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR,JUDGE

18.09.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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